

Union Calendar No. 495

106TH CONGRESS
2D SESSION

H. R. 4148

[Report No. 106-837]

To make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 30, 2000

Mr. YOUNG of Alaska (for himself and Mr. HAYWORTH), introduced the following bill; which was referred to the Committee on Resources

SEPTEMBER 12, 2000

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 30, 2000]

A BILL

To make technical amendments to the provisions of the Indian Self-Determination and Education Assistance Act relating to contract support costs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Tribal Contract Support*
 3 *Cost Technical Amendments of 2000”.*

4 **SEC. 2. AMENDMENT DETAILING CALCULATION AND PAY-**
 5 **MENT OF CONTRACT SUPPORT COSTS.**

6 *The Indian Self-Determination and Education Assist-*
 7 *ance Act is amended by adding after section 106 the fol-*
 8 *lowing new section:*

9 **“SEC. 106A. CONTRACT SUPPORT COSTS.**

10 “(a) *OTHER FEDERAL AGENCIES.—Except as other-*
 11 *wise provided by statute, an Indian tribe or tribal organi-*
 12 *zation administering a contract or compact under this Act*
 13 *shall be entitled to recover its full indirect costs associated*
 14 *with any other Federal funding received by such tribe or*
 15 *tribal organization (other than funds paid under this Act),*
 16 *consistent with the tribe’s or tribal organization’s indirect*
 17 *cost rate agreement with its cognizant Federal agency. This*
 18 *subsection shall not independently entitle such tribe or trib-*
 19 *al organization to be paid additional amounts associated*
 20 *with such other Federal funding.*

21 “(b) *ALLOWABLE USES OF FUNDS.—Notwithstanding*
 22 *any other provision of law (including regulation or cir-*
 23 *cular), an Indian tribe or tribal organization (1) admin-*
 24 *istering a contract or compact under this Act and (2) em-*
 25 *ploying an indirect cost pool that includes both funds paid*
 26 *under this Act and other Federal funds, shall be entitled*

1 *to use or expend all Federal funds in such tribe's or tribal*
 2 *organization's indirect cost pool in the same manner as per-*
 3 *mitted in section 106(j) (relating to allowable uses of funds*
 4 *without approval of the Secretary), and for such purposes*
 5 *only the term 'Secretary' means the Secretary of any Fed-*
 6 *eral agency providing funds to such tribe or tribal organi-*
 7 *zation.*

8 “(c) *CONSOLIDATED CONTRACT AMOUNT.—*

9 “(1) *CONDITIONS FOR CONSOLIDATION.—Com-*
 10 *mencing in fiscal year 2003, the Secretary shall con-*
 11 *solidate all funds paid to a tribe or tribal organiza-*
 12 *tion pursuant to paragraphs (1) and (2) of section*
 13 *106(a) into a single consolidated contract or compact*
 14 *amount if the following conditions have been met:*

15 “(A) *The tribe or tribal organization quali-*
 16 *fies to carry out a mature contract under this*
 17 *title or is operating a self-governance agreement*
 18 *under any other title of this Act.*

19 “(B) *The tribe's or tribal organization's in-*
 20 *direct cost rate has not varied more than 10 per-*
 21 *cent over the prior year's rate for the preceding*
 22 *3 years (for tribes or tribal organizations that*
 23 *have no indirect rate, this criterion shall be sat-*
 24 *isfied if the ratio of the tribe's or tribal organiza-*
 25 *tion's contract support requirement to its direct*

1 *cost base has not varied more than 10 percent*
2 *over the ratio for the preceding 3 years).*

3 “(C) *At the time of the consolidation the*
4 *tribe or tribal organization is receiving its full*
5 *contract support cost requirement as determined*
6 *under section 106(a)(2).*

7 “(2) *MEDICAL INFLATION RATE ADJUSTMENTS.—*
8 *Each year following the consolidation required by*
9 *paragraph (1), the Secretary of Health and Human*
10 *Services shall increase the amount of contract support*
11 *costs paid as part of the consolidated amount by an*
12 *amount equal to—*

13 “(A) *the adjustment in the medical care*
14 *component of the national consumer price index*
15 *over the preceding year, multiplied by*

16 “(B) *the contract support cost amount paid*
17 *in the preceding year as part of the consolidated*
18 *amount.*

19 “(3) *CONSUMER PRICE INDEX ADJUSTMENTS.—*
20 *Each year following the consolidation required by*
21 *paragraph (1), the Secretary of the Interior shall in-*
22 *crease the amount of contract support costs paid as*
23 *part of the consolidated amount by an amount equal*
24 *to—*

1 “(A) the adjustment in the national con-
2 sumer price index over the preceding year, mul-
3 tiplied by

4 “(B) the contract support cost amount paid
5 in the preceding year as part of the consolidated
6 amount.

7 “(4) *EMPLOYMENT ADJUSTMENTS.*—A tribe or
8 tribal organization shall be entitled to receive addi-
9 tional contract support costs associated with the
10 transfer of employees from Federal employment to
11 tribal employment. Such additional contract support
12 costs shall be added to the consolidated amount deter-
13 mined and adjusted under paragraphs (1), (2), and
14 (3), and shall thereafter become a part of the consoli-
15 dated amount.

16 “(5) *ADDITIONAL CONTRACT SUPPORT COSTS.*—
17 Notwithstanding any other provision of this Act, and
18 except as provided in paragraphs (4) and (8), the
19 tribe or tribal organization shall not be entitled to re-
20 ceive any contract support costs additional to those
21 contained within the consolidated amount determined
22 and adjusted under paragraphs (1), (2), and (3).

23 “(6) *REBUDGETING AUTHORITY UNAFFECTED.*—
24 The tribe or tribal organization may rebudget all con-
25 tract or compact funds as specified in section 106(n).

1 “(7) *DECONSOLIDATION.*—*Except as provided in*
2 *paragraph (8), in the event—*

3 “(A) *the amount of program funds paid*
4 *under section 106(a)(1) as part of the consoli-*
5 *dated amount, when combined with other pro-*
6 *gram funds paid to the tribe or tribal organiza-*
7 *tion from other funding sources, increases or de-*
8 *creases by more than—*

9 “(i) *20 percent over the amount paid*
10 *in the preceding year; or*

11 “(ii) *40 percent over the amount paid*
12 *in the preceding three years; or*

13 “(B) *the Secretary for good cause shown*
14 *agrees,*

15 *the amounts paid by the Secretary under this section*
16 *shall be deconsolidated, and such amounts shall be re-*
17 *calculated and paid as specified elsewhere in this Act.*
18 *Upon such recalculation, the recalculated amounts*
19 *shall be reconsolidated into a single amount as other-*
20 *wise described in this subsection.*

21 “(8) *CONTRACTING ADDITIONAL PROGRAMS.*—
22 *Nothing in this subsection shall affect the right of a*
23 *tribe or tribal organization to contract or compact for*
24 *the operation of new or expanded programs, services,*
25 *functions, or activities not included in the consoli-*

1 *dated amount paid under paragraph (1), or to be*
2 *paid the full amount of contract support costs associ-*
3 *ated with such additional contracted or compacted*
4 *programs, as provided in section 106(a)(1) and other*
5 *provisions of this Act. Any such additional programs*
6 *and associated contract support costs shall be added*
7 *to the consolidated amount determined and adjusted*
8 *under paragraphs (1), (2), and (3).*

9 *“(9) SEPARATE CONTRACTS AND COMPACTS.—*
10 *Nothing in this subsection shall require a tribe or*
11 *tribal organization to consolidate separate contracts*
12 *or compacts administered under this Act into a single*
13 *contract or compact.*

14 *“(d) NEGOTIATION OF CONTRACT SUPPORT COST*
15 *AMOUNTS.—Within the Indian Health Service of the De-*
16 *partment of Health and Human Services, the negotiation,*
17 *review, and approval of tribal contract support cost entitle-*
18 *ments shall be the responsibility of the Office of Tribal Pro-*
19 *grams, subject to the tribe’s or tribal organization’s indirect*
20 *cost rate agreement with the tribe’s or tribal organization’s*
21 *cognizant Federal agency.*

22 *“(e) DIRECT CONTRACT SUPPORT COSTS AND FED-*
23 *ERAL EMPLOYEES.—The contract support costs that are eli-*
24 *gible costs for the purposes of receiving funding under this*
25 *Act shall include direct contract support costs associated*

1 *with all Federal employees employed in connection with the*
2 *program, service, function, or activity that is the subject*
3 *of the contract, including all Federal employees paid with*
4 *funds generated from third-party collections.*

5 “(f) *REGULATIONS.—The Secretary of the Interior and*
6 *the Secretary of Health and Human Services are authorized*
7 *to promulgate joint regulations relating to the allowability*
8 *of costs expended under this Act, including all pooled indi-*
9 *rect costs and direct contract support costs. In promul-*
10 *gating such regulations the Secretaries shall follow the pro-*
11 *cedures set forth in sections 107(a)(2)(A), 107(d)(1),*
12 *107(d)(2)(A), 107(d)(2)(B), 107(d)(2)(D), and*
13 *107(d)(2)(E), and shall publish proposed regulations in the*
14 *Federal Register to carry out this subsection not later than*
15 *180 days after the date of enactment of the Tribal Contract*
16 *Support Cost Technical Amendments of 2000. The author-*
17 *ity to promulgate regulations under this subsection shall*
18 *expire if final regulations are not promulgated within 18*
19 *months after the date of enactment of the Tribal Contract*
20 *Support Cost Technical Amendments of 2000. In the event*
21 *of a conflict between such regulations and any Office of*
22 *Management and Budget circular, the provision of such reg-*
23 *ulations shall control. The Secretary may, with respect to*
24 *a contract or compact entered into under this Act, make*
25 *exceptions in the regulations promulgated to carry out this*

1 subsection, or waive such regulations, if the Secretary finds
 2 that such exception or waiver is consistent with the policies
 3 of this Act, and is not contrary to statutory law. In review-
 4 ing each request, the Secretary shall follow the timeline,
 5 findings, assistance, hearing, and appeal procedures set
 6 forth in section 102.”.

7 **SEC. 3. AMENDMENTS CLARIFYING CONTRACT SUPPORT**
 8 **COST ENTITLEMENT.**

9 *The Indian Self-Determination and Education Assist-*
 10 *ance Act is amended—*

11 *(1) in section 105(c)(1), by striking the last flush*
 12 *sentence;*

13 *(2) in section 106(b)—*

14 *(A) by striking “the provision of funds*
 15 *under this Act is subject to the availability of*
 16 *appropriations and”; and*

17 *(B) by adding at the end thereof the fol-*
 18 *lowing flush sentence:*

19 *“Necessary amounts are appropriated to pay contract sup-*
 20 *port costs when not otherwise provided for.”;*

21 *(3) in section 1(b)(4) of the model contract set*
 22 *forth in section 108(c), by striking “Subject to the*
 23 *availability of appropriations, the” and inserting*
 24 *“The”; and*

1 (4) in section 106(a)(5) by adding at the end
2 thereof the following flush sentence:

3 *“Notwithstanding any other provision of law, the Secretary*
4 *shall fully pay preaward and startup costs without regard*
5 *to the year in which such costs were incurred or will be*
6 *incurred, including such costs payable to tribes and tribal*
7 *organizations identified by the Indian Health Service as*
8 *‘ISD Queue Tribes’ in its September 17, 1999, report enti-*
9 *tled ‘FY 1999 IHS CSC Shortfall Data’.*”.

10 **SEC. 4. AMENDMENT ENLARGING CONTRACT PROPOSAL RE-**
11 **VIEW PERIOD.**

12 Section 102(a)(2) of the Indian Self-Determination
13 and Education Assistance Act is amended—

14 (1) by striking “ninety” in the second sentence
15 and inserting “180”; and

16 (2) by striking “90-day” in the third sentence
17 and inserting “180-day”.

18 **SEC. 5. AMENDMENTS REGARDING JUDICIAL REMEDIES.**

19 Section 110 of the Indian Self-Determination and
20 Education Assistance Act is amended—

21 (1) in subsection (c), by inserting after “admin-
22 istrative appeals” the following: “, and section
23 2412(d)(2)(A) of title 28, United States Code, shall
24 apply to appeals filed with administrative appeals
25 boards, in appeals”; and

1 (2) *by adding at the end the following new sub-*
2 *section:*

3 “(f) *REIMBURSEMENT OF PAYMENTS.—None of the*
4 *funds appropriated to the Secretary to carry out programs,*
5 *functions, services, or activities that are contractible under*
6 *this Act shall be available to reimburse payments made in*
7 *satisfaction of judgments awarded under subsections (a)*
8 *and (d).”.*

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